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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

In re Matter of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

Dear Mr. Caton:

Enclosed for filing in this docket are the original and one copy of a letter to Mary Beth Richards and Kathy Franco, addressing the federal tariffing requirements under the Commission's payphone orders. I sent this letter to Ms. Richards and Ms. Franco today on behalf of the RBOC Payphone Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902.

Thank you for your consideration.

Yours sincerely,

Michael K. Kellogg

Michael K. Kellogg

cc: Mary Beth Richards
Kathy Franco

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In re Implementation of the Pay Telephone
Reclassification and Compensation Provisions
of the Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mary Beth and Kathy:

On behalf of the RBOC Payphone Coalition, I write to respond to the March 27, 1997, ex parte letter submitted by the American Public Communications Council (the "APCC Ex Parte"). To the extent that the arguments raised in the APCC Ex Parte have already been answered by the Coalition's prior letters, the Coalition will endeavor not to repeat those responses here.

A. As an initial matter, I should point out that the APCC at no point disagrees with the three basic limits on the federal tariffing requirement set forth in the Coalition's ex parte letter of March 19, 1997. In fact, the APCC expressly agrees with the first two -- that federal tariffing is limited to (1) network features that are (2) payphone-specific. APCC Ex Parte at 2. More important still, the APCC does not dispute -- and cites not even a snippet of language from the payphone orders -- to contradict the third limit set forth in the Coalition's March 19 letter. Nowhere does the APCC deny that, under the plain and unambiguous language of the payphone orders, federal tariffing is limited to those unbundled, payphone-specific network elements that the LEC PSP uses itself.

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Instead, the APCC urges that the Coalition's "mantra-like repetition of quotations from the Payphone Order should not distract from the fundamental point." APCC Ex Parte at 3. In other words, don't get confused by what the payphone orders actually say. Instead focus on the APCC's view of what they should have said, or what the APCC wishes they had said.

Consistent with this approach, the APCC begins its argument by asserting -- without any citation to the payphone orders themselves -- that the Commission "intended" there to be a single, basic payphone line "to serve as a building block to which additional features and functions would be added as options." APCC Ex Parte at 3. The APCC continues:

Coin service features, answer supervision, and blocking and screening are all options that can be, but need not be, added by a PSP to the basic payphone line. Thus, each of these services is an "unbundled feature or function" and each must be federally tariffed if the function is actually used by the LEC -- whether in "bundled" or "unbundled" form -- to provide payphone service.

Id. In essence, the APCC is arguing that the payphone orders required the unbundling of the smart line so that PSPs could rebuild it out of federal tariffs in piece parts.

But none of the APCC's assertions have any basis in the payphone orders. First, the APCC cites nothing in the payphone orders that requires the RBOCs to establish a single basic building-block payphone line to which pieces can be added, a la carte, to recreate the "smart line." In fact, the payphone orders are directly to the contrary. By their terms, they recognize that there will be at least two basic payphone lines -- a "dumb" line for "smart" payphones, and a "smart" line for "dumb" payphones. See Report and Order ¶ 146 (requiring the provision of basic services enabling PSPs to use either "instrument-implemented 'smart payphones'" which use the dumb line or "'dumb' payphones that utilize central office coin services.").¹ The payphone order requires RBOCs to unbundle further and federally

¹This was consistent with the position taken by the Coalition, which urged the Commission to require RBOCs to provide to independent PSPs the same basic payphone services that they provide to themselves -- one basic line for smart phones, and another line for dumb phones. See Report and Order ¶ 135.

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tariff individual features only if they use the unbundled features themselves. See Letter from Michael K. Kellogg to Mary Beth Richards, March 19, 1997, at 2-5 ("Coalition Letter of March 19"); Letter from Michael K. Kellogg to Mary Beth Richards and Kathy Franco, March 25, 1997, at 5-7 ("Coalition Letter of March 25").

The APCC's further assumption -- that RBOCs are required to unbundle every feature they use beyond the hypothetical, single basic payphone line, even if they acquire it as part of a basic, bundled payphone line -- is similarly unsupported. The APCC cites nothing in the payphone orders that imposes such an obligation. Indeed, the APCC's argument, in effect, would lead to the conclusion that the RBOCs must unbundle every element of the "smart" line, as each is used by the RBOC PSP. But the Commission expressly rejected such unbundling because it would require expensive modification to switch logic, and because it was unnecessary to payphone competition. See Coalition Letter of March 25, at 8-9. And surely if the Commission had wished to unbundle the basic smart line into its constituent elements, it would have notified the RBOCs and identified the elements.

Moreover, the APCC's interpretation would place the payphone orders in conflict with the CEI/Computer III requirements they purport to apply. The underlying purpose of these requirements is to ensure that the arrangements the RBOCs supply to themselves are also available to competitors; there is no requirement that RBOCs make available to competitors arrangements they themselves do not use except on request under ONA's 120-day process. Report and Order, Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), 104 FCC 2d 958, 1040 n.216 (1986) ("[A] carrier need not, under our CEI requirements, provide unbundled basic service elements not employed by its enhanced service operations"). Indeed, the Commission in the past has only required CEI plans to make available to competitors those basic service packages the RBOC itself uses on an unbundled basis; no further unbundling is required.² The APCC nowhere disputes this, and nowhere explains why its interpretation is consistent with CEI/Computer III.

²See March 25 Coalition Letter at 6; Memorandum Opinion and Order, NYNEX CEI Plan for Voice Messaging Services, 4 F.C.C. Rcd 554, 555, ¶ 15 (Com. Carrier Bureau 1989) ("For CEI purposes a BOC must only make available to others the same basic services that it uses [No] further unbundling . . . is required to satisfy CEI requirements.")).

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The APCC's further suggestion that the RBOCs are attempting to evade federal tariffing by "structuring" their "coin line offerings" into two bundled packages rather than one basic line plus multiple unbundled features, APCC Ex Parte at 2, is wrong. It is switch technology that structures the RBOCs' offerings, not a desire to evade federal requirements. The RBOCs offer two basic packages -- a dumb line for smart phones and a smart line for dumb phones -- because that is how switches provision it. As the Coalition elsewhere has explained, unbundling the elements of the "smart line" to make them "additives" to the basic COCOT line would be prohibitively expensive, and the Commission for that very reason declined to order such unbundling. Coalition Letter of March 25, at 8-9. Even Roseville Telephone Company, which filed tariffs purporting to offer unbundled services, is technologically incapable of actually unbundling them; instead, Roseville will deploy one of the two same basic lines as Coalition members, regardless of what the PSP orders. See id. at 11.

Finally, the APCC argues that the problems involved in mix-and-match should not deter the Commission from imposing an unprecedented regime -- one that allows PSPs to pick and choose between federal and state tariffs without regard for the consequences. The sum total of the APCC's argument is that the payphone orders are designed to allow PSPs to choose a cost-based federal rate over a non-cost-based state rate. APCC Ex Parte at 3. Again, however, the APCC cites nothing in the order to support this. Nor could it, as the payphone orders say nothing about mix-and-match whatsoever.

More important, the APCC's argument assumes that, if state rates and federal rates differ, it is because state rates are not "cost-based." This assumption is false. Even where different jurisdictions both use cost-based rates, they sometimes allocate joint and common costs among services differently, and thus produce different rates. To the extent PSPs are allowed to arbitrage these permissible rate differences through mix-and-match, RBOCs are denied full cost recovery -- an impermissible result. See Coalition Letter of March 25, at 10.

In any event, the APCC simply ignores the remaining problems with mix-and-match. As the Coalition has pointed out, the Commission previously rejected mix-and-match because it creates severe jurisdictional separations problems; in particular, it generates a mismatch between cost allocation and revenue

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generation.³ Moreover, because state and federal regulators might place different restrictions on the use of basic lines and unbundled elements, it becomes difficult for "each jurisdiction to maintain its own regulatory policies and avoid intruding on the other jurisdiction's ability to implement its policies."⁴ The APCC suggests no way to ameliorate these difficulties, much less eliminate them.

B. The APCC's arguments about why specific services should be tariffed federally are no more persuasive. Indeed, even under the criteria the APCC itself sets out, unbundling and federal tariffing of these features is not required.⁵

1. Answer Supervision. Answer supervision provides a line-side signal to the CPE (by way of a battery reversal) that the call has been answered or disconnected.

While the APCC complains bitterly that four Coalition members (Bell Atlantic, BellSouth, NYNEX, and Pacific), as well as Ameritech, did not file federal tariffs for this feature, it is clear from the payphone orders themselves that no such filing is required. Under those orders, federal tariffing is unnecessary unless the RBOC PSP itself takes the feature on an unbundled basis. Because none of the four Coalition members who declined to file tariffs for answer supervision take the feature on an unbundled basis, their decision was entirely proper.⁶

³Coalition Letter of March 25, at 9; Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 4 F.C.C. Rcd 3983, 3989, ¶ 44 (1989) (explaining that, under mix-and-match, costs associated with the feature would be "apportioned to the state jurisdiction, but the revenues associated with" it "would be apportioned to the interstate jurisdiction, leading to a cost/revenue mismatch between the jurisdictions.").

⁴Coalition Letter of March 25, at 10 (quoting 4 F.C.C. Rcd at 3989, ¶ 46).

⁵The Coalition assumes for the sake of argument only that federal tariffing of these intrastate services is permissible in the first place.

⁶The APCC throws call screening in together with answer supervision. For the reasons stated above, the Coalition does

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Moreover, even if one were to accept the APCC's interpretation -- that the RBOCs are required to tariff federally any individual feature they take (whether they take it as part of a bundled package or not), federal tariffing of answer supervision still is not required for all of the regions. BellSouth, for example, does not even offer answer supervision in any state except Florida, and its PSP does not take answer supervision at all in any state. Consequently, even under the APCC's interpretation, BellSouth and those RBOCs that do not use answer supervision do not need to file federal tariffs for that service.⁷

2. Coin Service Features

While the APCC's argument regarding so-called "coin service features" (coin supervision, coin counting, call rating) is far from clear, it seems to be a rehash of its argument for complete unbundling of the "smart line" for dumb payphones. In essence, the APCC argues that, because these features are not "inherently" part of the basic "dumb line" for smart payphones, they "are appropriately" considered or "properly defined" as -- the APCC does not dare say that they in fact are -- "unbundled features." See APCC Ex Parte at 5.

First, because the argument relies on the premise that there is a single, basic payphone line type, it suffers from the same fatal flaw as the rest of the APCC's argument. Simply put, the Commission did not in its orders contemplate one basic "dumb" line to which unbundled features could be added to recreate the "smart" line. Instead, it recognized and required LECs to provision two basic lines, one smart and one dumb.

not believe that call screening functions must be federally tariffed unless the RBOC PSP also buys that feature on an unbundled basis.

⁷The APCC may simply have confused answer supervision with coin supervision. But the two features operate differently, and are not interchangeable. Answer supervision sends a battery reversal signaling the phone that the call has been completed or terminated. Coin supervision sends an electrical current that operates the coin accept or return function of the dumb payphone. If APCC's members want to buy coin supervision on the same terms as the RBOC PSPs, it is available as part of the same smart line that RBOC PSPs buy.

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Second, and more important, the argument is utterly incoherent. The fact that a group of features is part of one line, but not part of another, does not mean the group is "unbundled." To the contrary, coin control features are available only as a bundled "smart" line that includes both coin control and various call screening features. Moreover, the coin control features "are . . . inherently part of the basic" smart "payphone line," APCC Ex Parte at 5, because they are a critical part of what makes the "smart line" smart. The fact that they are not part of the "dumb line" simply does not mean that they must therefore be unbundled and available as "add ons" to the dumb line.

Third, the APCC's characterization of the RBOCs' argument on this point -- that these "coin services are not unbundled features or functions because the RBOCs have chosen to include these features in a bundled 'coin line' offering" -- is wholly inaccurate. These features are part of a bundled coin line offering not because the RBOCs have chosen to offer them that way, but rather because that is the way they are provisioned at the switch. There is an option to provide a dumb line. There is an option to provide a smart line. But there is no option to provide a dumb line plus the coin control option from the smart line. To change the way the lines are provisioned to make "smart features" an option on a "dumb line" would require expensive switch changes. If the APCC truly wants the RBOCs to implement these costly changes to their switches, it should submit an appropriate request under ONA. But the APCC does not want to do that, because it cannot show feasibility, demand, or even that its members even really want unbundled features.⁸

Finally, the APCC argues that "allowing" coin control features to remain a bundled part of the "smart line" has resulted in state pricing determinations of which it disapproves. APCC Ex Parte at 6. But the Commission expressly considered whether to leave basic line tariffing with the states, and determined that it was appropriate to do so. Recon. Order ¶ 163 ("LECs are not required to file tariffs for the basic payphone

⁸In addition, it is simply mystifying -- and a testament to APCC's chop-logic arguments -- how the APCC can refer to this group of features (including coin supervision, coin counting, and call rating) as "unbundled elements." These disparate features themselves constitute a bundle and are not sold or provisioned separately from each other. As a result, they cannot be labeled "unbundled" elements.

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line for smart and dumb payphones with the Commission. We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276."). In essence, the APCC is arguing that this was a mistake because the states are not doing an adequate job. But that is the basis for a motion for reconsideration, not for imposing unbundling requirements nowhere countenanced by the payphone orders. In any event, it seems to the Coalition that, if the APCC does not like the state tariffs, the appropriate course would be to take the issue up with the states first.

C. The true purpose behind APCC's filings and its position is most evident in the final paragraph of its submission. There, the APCC urges the Commission to disapprove the RBOCs' CEI plans, and not to grant a waiver of any conditions for entry -- even though the conditions the APCC seeks to impose appear nowhere in the language of the payphone orders.

The APCC urges the Commission to arrive at this result not because the APCC's members actually need the identified features to be unbundled and federally tariffed in the short (or long) term; the APCC nowhere denies that, whenever the LEC purchases a payphone feature itself, the feature is made available on identical terms to competing PSPs. Nor does the APCC argue that its members in fact are prepared to take advantage of unbundled offerings; there is little or no demand for unbundled features, because equipment designed to take advantage of such unbundling does not yet exist. Indeed, the APCC does not even urge this result because it will lead to faster federal tariffing of the unbundled features the APCC seeks. It cannot argue this, because the Commission can achieve this result faster by approving the RBOC CEI plans and ordering them to file additional tariffs on an expedited basis.

Instead, the APCC argues for disapproval of the RBOC CEI plans as part of a deliberate strategy of regulatory delay. By asking for things its members do not need, demanding unbundling and federal tariffing the payphone orders do not require, and attempting to rewrite the order to maximize the regulatory impediments that are imposed on the RBOCs, it seeks to delay the entry of RBOC PSPs into the business and to deny them per call compensation for still more time. But Congress, in enacting Section 276, commanded the FCC to brook no delays, and the RBOCs have complied in good faith with the terms of the Commission's timely-issued payphone orders. There is no reason, in logic or law, why the process should now be held up at the 11th hour because the APCC reads into the payphone orders requirements that

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simply are not there. Any feature the APCC truly wants can be considered under the 120-day procedure provided by ONA.

The Coalition accordingly urges the Commission to resist the APCC's strategy of regulatory delay and to approve the RBOCs' timely and proper payphone CEI plans.

Yours sincerely,

Michael K. Kellogg

Michael K. Kellogg

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